

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

RICKY LEE HORTON,

Petitioner,

v.

Case Number: 04-10060  
Honorable David M. Lawson

ANDREW JACKSON,

Respondent.

**ORDER GRANTING MOTION TO REOPEN CASE, DIRECTING CLERK TO  
REOPEN CASE FOR STATISTICAL PURPOSES, AND ORDERING RESPONSE TO  
AMENDED HABEAS PETITION**

This matter is before the Court on the petitioner's motion to reopen the case following his exhaustion of state court remedies. The petitioner filed his original petition for writ of habeas corpus on March 10, 2004, challenging his conviction for possession with intent to deliver cocaine and attempted possession of cocaine on the grounds that he was denied the effective assistance of counsel and that his sentence violated the proportionality principle of the Eighth Amendment. The petitioner subsequently filed a motion to stay the habeas proceedings in recognition of the fact that he did not present his Eighth Amendment claim in federal constitutional terms to the state courts. On February 8, 2005, the Court entered an order granting the petitioner's motion to stay and administratively closing the case. Therein, the Court stated that if the petitioner filed a timely motion for relief from judgment with the state trial court, the habeas proceedings would be held in abeyance pending the petitioner's exhaustion of the unexhausted issues. The Court also instructed that, if he so chose, the petitioner should file an amended habeas petition within twenty-eight days after the conclusion of the state court proceedings. In the meantime, the Court instructed the Clerk of Court to close the case for statistical purposes only.

On December 26, 2006, the petitioner filed the present motion to reopen the case and an amended petition for writ of habeas corpus. Along with his motion and amended habeas petition, the petitioner included an order from the state trial court, dated August 19, 2005, denying his motion for relief from the judgment on grounds of ineffective assistance of counsel and Eighth Amendment proportionality concerns, an order from the state appellate court, dated June 7, 2006, denying his application for leave to appeal, and an order from the state supreme court, dated November 29, 2006, denying his application for leave to appeal the appellate court's order. Given this last date, the petitioner's motion to reopen the case and amended habeas corpus petition were timely in that they were filed within twenty-eight days after the conclusion of the state court proceedings, consistent with this Court's order.

Accordingly, it is **ORDERED** that the motion to reopen the case and to amend the habeas corpus petition [dkt # 24] is **GRANTED**.

It is further **ORDERED** that the Clerk of Court shall reopen this case for statistical purposes.

It is further **ORDERED** that the Respondent shall file an answer to the amended habeas corpus petition in accordance with Rule 5 of the Rules Governing Section 2254 Cases in the United States District Courts **on or before February 26, 2007**.

s/David M. Lawson  
DAVID M. LAWSON  
United States District Judge

Dated: January 9, 2007.

**PROOF OF SERVICE**

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on January 9, 2007.

s/Felicia Moses  
FELICIA MOSES